

MINUTES OF MAY 21, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 21, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to approve the revised agenda as circulated. Motion carried 5 – 0.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously to approve the Minutes for March 19, 2018. Motion carried 5 – 0.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Facts for April 9, 2018. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

OLD BUSINESS

Case No. 12112 – Hudson Family, LLC seeks a determination of whether existing non-conforming uses exist (Section 115-202 of the Sussex County Zoning Code). The property is located on the northwest side of Eagle Crest Rd., approximately 495 ft. southwest of the intersection of Coastal Hwy. (Rt. 1) and Eagle Crest Rd. 911 Address: 30045 Eagle Crest Rd., Milton. Zoning District: AR-1. Tax Map: 235-22.00-50.02, 235-22.00-50.03, 235-22.00-52.00, 235-22.00-441.00, and 235-22.00-442.00

Mrs. Walls presented the case which has been tabled since March 5, 2018 and stated that the Applicants are requesting a determination of whether existing non-conforming uses exist.

Mr. Sharp reminded the Board that the case was left open for the limited purpose of allowing the Board to review the documents submitted into the record and the testimony and to ask questions of the Applicant. Mr. Sharp advised the Board that a letter was received from the Applicant's attorney and that the Applicant wished to include that in the record.

John Paradee, Esquire, was present on behalf of the Applicant, also present were his co-counsel, George Kroculick and Daniel Mita.

Mr. Paradee submitted proposed Findings of Fact, a transcript of the March 5th public hearing, and letters to the Board.

Christian Hudson and Jamin Hudson were sworn in to testify about the Application.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously to accept into the record the proposed Findings of Fact, a transcript of the March 5th public hearing, and a letter dated April 16, 2018 into the record. Motion carried 5 – 0.

Mr. Paradee stated that the Applicant requests that the Board make 6 determinations: 1) that the Property has been used as an airport prior to the enactment of the Sussex County Zoning Code; 2) that the airport use of the Property has continued to the present day, without remaining idle or unused for a continuous period of two years or more, and without intention to abandon or discontinue said use; 3) that the special events use of the Property existed prior to the enactment of the Sussex County Zoning Code; 4) that the special events use of the Property has continued to the present day, without remaining idle or unused for a continuous period of two years or more, and without any intention to abandon or discontinue use, 5) that, pursuant to §115-202 of the Code, the airport use of the Property be recognized as a legal, nonconforming use of the Property which may continue as provided in §115-195 of the Code; and 6) that pursuant to §115-202 of the Code, the special events use of the Property be recognized as a legal, nonconforming use of the Property which may continue as provided in §115-195 of the Code.

Mr. Mears asked if the concerts have continued every two years or less.

Mr. Paradee stated that the frequency of specific events is not germane to the issue at hand; that the use which the Applicant seeks to have identified and confirmed is a special events use; that the Code recognizes special events as a use; that the applicant does not seek permission for sub-uses; that the Applicant seeks permission for a general special events use; that the request is analogous to an ice cream shop that sells different flavors of ice cream; that the Applicant argues that the site is a festival ground; that, as long as the site was used as a festival ground once every 2 years and the Applicant had no intent to abandon the use, the special event use was not abandoned; that §115-22 references special events and is not a limiting definition; that the Applicant asks the Board to recognize that the Property is being used for that use; that the Property has been used in this manner since prior to the enactment of the Code; and that in, Kirkwood Motors, the Court held that a board of adjustment has no authority to place limitations on pre-existing, non-conforming uses when those uses are vested.

Mr. Sharp stated that courts have long-held that the non-conforming uses are limited in nature with the intention that, over time, the use will cease and the property will then comply with zoning authority; that the Applicant has proffered an interpretation that all of the uses must be grouped together as one use; that the other interpretation is that each of those uses must be viewed independently of each other; that the Court has determined that the parking of a school bus was a different use from the parking of a garbage truck; that, in another case, the Court determined that a facility used for professional boxing and then switched uses to a furniture exhibition hall could not convert back to the professional boxing facility; that these cases indicate that specificity is

important; that he has concerns that some of the enumerated uses do not fall within a special events use anyway; and that the Applicant could apply for a conditional use for some of the uses.

Mr. Paradee stated that the Applicant is not seeking an “infinite” number of uses; that the Code identifies special events as a use and the Applicant seeks a determination under that use; that the Applicant would be comfortable with the Board determining that the Property can be used as a special events use and the Applicant would live by the definition of special events in the Code; that special events use never changed on the Property; that Morgan v. Callaway held that non-conforming uses are to be strictly construed but that the law cannot be interpreted to unlawfully constrict or eradicate those uses; that York Beach Mall v. Board of Adjustment held that non-conforming use exception should be interpreted to allow intensification where normal growth and expansion require such intensification; that this proposal is similar to an ice cream shop which chooses to use a different flavor of ice cream; that it is fair to say that they could not construct a football stadium on site; that the Applicant should be permitted to continue with the special event uses in a manner which has used the Property over the past 50 years; that the Code allows a hardware store to sell different merchandise; that the use of the Property has not changed; and that the special events ordinance was not in effect at the time the Code was enacted.

Ms. Magee questioned Mr. Paradee about a retail shop analogy as compared to a special event use.

Mr. Paradee stated that the Applicant is seeking a determination that the Property is a non-conforming special event parcel and the use has evolved over time.

Mr. Sharp stated that the Code provides that, if a use is not permitted, it is prohibited; that the issue is what are the uses which were in effect on the Property in 1970 and are considered non-conforming; and that the Auditorium case provides that non-conforming uses are specific and not to be extended to include general use classifications.

Mr. Paradee stated that, if there was no special events ordinance, it would be more difficult to define the use of the Property; that the special events ordinance is broad enough to encompass the use of the Property; that the special events definition is a way to define the use of the Property because it suffices to cover what the Applicant’s use is; and that special events include circuses or carnival grounds, amusement parks or midways, festivals, concerts, races/walks or any other special event or mass gathering.

Mr. Sharp reminded the Board that the purpose of the hearing was for the Board to question the Applicant about the Application.

Mr. Workman stated that the Applicant has been operation and had weddings, concerts, Punkin’ Chunkin’, and other events and have not changed; that the use is not out of character for the neighborhood; that the use should have been grandfathered into the Code; that he does not see

where the use has changed; that the site was used for concerts; that the Applicant has been having events on site; and that he believes the Applicant has met its burden of proof.

Mr. Paradee stated that there were 68 affidavits submitted into the record and there is evidence of concerts prior to 1970; that the Applicant seeks a determination that the Property has been used as an airport use and a special events use as defined in the Code; and that all 5 parcels have been used for all of the uses at various times.

Ms. Magee stated that the Applicant is providing a service to the public and has been doing so for many years and that she believes it is a great thing that we still have this type of property in Sussex County.

Mr. Paradee stated that the Applicant is not technically restricted as to the number of concerts on the Property; that the Freeman Stage holds 60 concerts per year; that Hudson Fields does not intend to hold that many concerts; that there are a whole host of regulations which the Applicant must comply with such as DelDOT traffic control regulations, police, EMS, and Department of Health just to have any event on the Property; that there are other agencies who will regulate these events; that it is not always economically feasible to hold concerts on the Property; that Punkin Chunkin was discontinued on the Property because it became too much; and that the Applicant does not intend to jeopardize the future of the County or public safety.

Mr. Mills stated he questions if all the parcels are being used for all the events and if the airport is closed down when the events are happening.

Mr. Paradee stated that Parcel 442 was approved for a conditional use for a landing strip and runway; that Parcel 50.02 is used for overrun; that, when the Property is not used as an airport, all 5 parcels are used for special events; that parking and staging are held on all 5 parcels; that the airport is a private airport with a small number of planes which can be easily closed; and that he is not aware of any requirement restricting the airport from closing.

Mr. Christian Hudson testified that planes are allowed to land on public roads in emergencies; that he is not sure if the FAA has different regulations regarding a public airport versus a private airport; that the airport is considered a private airport and is subject to looser FAA regulations; that there is no control tower and it is not constantly monitored; and that the FAA treats it is a grandfathered airport as well.

Mr. Mills questioned if all five parcels were being using for every event.

Mr. Paradee stated that all five parcels are used in all activities and sites the transcript from the March 5th public hearing testimony stating that the affidavits state that all five parcels have been continued to be used for those uses.

Mr. Callaway questioned if the airport is considered a commercial airport or private airport.

Mr. Paradee stated that the airport is both private and commercial; that the airport is a private commercial airport used for business and is not open to the public; and that commercial uses exist at the airport such as storing planes, storing fuel, and servicing planes.

Mr. Sharp stated that the Code is clear that the non-conforming use must be demonstrated on the entire lot; and that it was unclear how often some of these events took place – such as the concerts.

Mr. Paradee stated that it was irrelevant how often the concerts were held; that the record demonstrates that concerts were held continuously; and that the Board should look at the special event use and whether special events took place continuously.

Mr. Sharp stated that the Code provides that each of the enumerated uses are their own separate uses and must be separately proven on each parcel; and that special events was not a defined use in 1970.

Mr. Paradee stated that the record is undisputed that all uses were in effect on all 5 parcels continuously; that abandonment requires more than a mere temporary suspension of the use and requires the concurrence of an intention on the part of the owner to abandon or relinquish the use with an overt act, or failure to act, showing the consummation of that intention; that the burden of proving abandonment is on the government; and that there is no evidence of an intent to abandonment.

Mr. Sharp stated that case law also provides that a cessation of use for a period of 2 years is evidence of an abandonment or discontinuance of the use.

Mr. Paradee stated that the Property never remained idle for 2 years or more.

Mr. Sharp stated that the Code provides that the casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

Mr. Workman stated that he believes the Applicant has proved the continuous special events use on all the parcels.

Ms. Magee moved to approve the Applicant's request that a determination of non-conforming uses exist on the Property based on the record made at the public hearing. More specifically, Ms. Magee moved to approve the special event use as an existing non-conforming use and the use of a private airport on the Property and that special use events use existed prior to the enactment of the Code and has continued to the present day, without remaining idle or unused for a continuous period of two years or more.

Motion by Ms. Magee, seconded by Mr. Workman, and carried that **the airport and special events uses exist as non-conforming uses**. Motion carried 4 – 1.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – nay.

PUBLIC HEARINGS

Case No. 12141 – Jonathan Orlando seeks a special use exception from parking and loading requirements (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the north side of Robinson Dr., approximately 214 feet east of Coastal Hwy. (Rt. 1). 911 Address: 38171 Robinsons Dr., Rehoboth Beach. Zoning District: C-1. Tax Map: 334-20.09-27.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. The letter of support was read into the record. The Applicant seeks a special use exception from the parking and loading requirements to allow for off-site parking on a parcel adjacent to a restaurant.

Jonathan Orlando was sworn in to testify about the Application.

Mr. Orlando testified that he owns the restaurant next to the property; that he purchased the property to use for parking; that he increased the number of handicap parking spaces available in front of the restaurant; that there were not enough handicap spots in front of the restaurant; that the off-site parking is used by employees and for overflow to not clog up the main parking; that he did not understand he had to go through this approval process; that the parking lot is made up of crush and run; that the property has been used for parking for four years; that the restaurant is located on Parcels 26 and 27; that there is no lighting, electric, or plumbing; that there are no parking fees; that there are no entrance issues with DelDOT; that he has improved the drainage; that there are neighborhoods in the area; that the parking will not substantially affect adversely neighboring and adjacent properties; that there is no overnight parking on the property; and that 90% of the time the parking lot is used for employee parking.

Mr. Sharp stated that the Applicant's request is for a special use exception for off-site parking under §115-80 B(1) of the Sussex County Zoning Code.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills moved to approve Special Use Exception Application No. 12141 for the requested special use exception for off-site parking on a parcel adjacent to a restaurant based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12142 –Vincent Passannante seeks variances from the front yard setback, side yard setback, and maximum fence height on a through lot for existing and proposed structures (Sections 115-42, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Camp Arrowhead Rd., approximately 132 feet east of Skyler Dr., and a second front of Chestnut Ln. 911 Address: 22901 Camp Arrowhead Rd., Lewes. Zoning District: GR. Tax Map: 234-12.00-200.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 20.6 feet from the thirty (30) feet front yard setback requirement along Chestnut Lane for an existing shed, a variance of 19.8 feet from the thirty (30) feet front yard setback requirement from Chestnut Lane for an existing shed, a variance of 9.1 feet from the ten (10) feet side yard setback requirement on the east side for an existing shed, and a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for a proposed 6 feet tall chain link fence.

Brittany Alexander and Vincent Passannante were sworn in to testify about the Application.

Mr. Pasannante testified that they own 3 dogs; that the sheds existed when the property was purchased; that they did not know the sheds were in violation; that the well and water pump are located in the smaller shed; that the house was built in 2006; that the sheds were possibly placed then also; that the sheds cannot be moved into compliance; that there is no access to the property from Chestnut Lane; that there is no septic; that there are no neighbor complaints; that the proposed fence is a 6 foot tall chain link fence; and that there are no concerns with visibility.

Pat Alexander was sworn in to testify in support of the Application. Ms. Alexander testified that she is in favor of the application; that Chestnut Lane is wooded; that there is no lane visible; and that the Applicants have three dogs that need to be contained.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills asked the Applicants to address the five standards for granting a variance.

Mr. Passannante testified that Chestnut Lane is not used; that the property is unique because it is shaped like a trapezoid; that, due to the shape of the land, if they were to build thirty (30) feet away from Chestnut Lane then there would be no room in the backyard to do anything; that the

backyard will mainly be used for the three dogs and the fence will keep them inside the property; that they did not create the shape of the land; that they purchased from a seller; that the dirt road is unused behind their property; that the fence will not alter the character of the neighborhood; that it is a 6-foot chain-link fence and will be installed properly; that you will not be able to see the fence from Camp Arrowhead Road and the structures will not pose any visibility concerns for traffic; and that they are only looking to build on their own property and the fence will not go over the property line.

Mr. Workman moved to approve Variance Application No. 12142 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and shape;
2. The variances are necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicants because they purchased the property as is;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12143 – Paul & Mary Ruyter seek a variance from the side yard setback for a proposed structure (Sections 115-42 and 115-181 of the Sussex County Zoning Code). The property is located on the west side of Blue Teal Rd., approximately 465 feet north of Swann Dr. 911 Address: 37003 Blue Teal Rd., Selbyville. Zoning District: GR. Tax Map: 533-12.16-413.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 3.4 feet from the five (5) feet side yard setback requirement for a proposed HVAC system on the south side.

Paul Ruyter and Mary Ruyter were sworn in to testify about the Application. Jim Fuqua, Esquire, presented the Application on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board.

Mr. Fuqua stated that the property is located in Swann Keys; that the property is zoned General Residential; that the property is 40 feet wide; that the property is unique as it is very narrow; that the property cannot be reasonably developed without a variance; that after the applicants filed for the variance, the Sussex County Zoning Code was amended; that the amendment to the code eliminated most of the variances needed; that the only variance left is

needed for the HVAC; that the HVAC is 3.5 feet long; that only a small portion of the HVAC is located within the setback; that the exceptional practical difficulty was not created by the applicants; that there are newer homes in the neighborhood; that it will not alter the essential character of the neighborhood; that there are neighbors with variances; and that variances have been granted on four properties located across the street.

Mr. and Mrs. Ruyter affirmed the statements made by Mr. Fuqua as true and correct.

Mr. Fuqua stated that construction has already started; that the home is one story tall; that the HVAC cannot be moved to the other side; and that there are numerous HVAC systems with similar variances.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12143 for the requested variance based on the record made at the public hearing and because the request meets all the standards for granting a variance.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12144 – Kathy W. Camac seeks variances from the front yard, side yard, and rear yard setbacks for existing and proposed structures (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located at the west side of Taft Ave., approximately 212 feet south of Old Lighthouse Rd. 911 Address: 38824 Taft Ave., Selbyville. Zoning District: AR-1. Tax Map: 533-20.18-159.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application and no correspondence in opposition to the Application. The letters of support were read into the record. The Applicant seeks a variance of 4.8 feet from the five (5) feet front yard setback requirement for a proposed addition, variances of 3.7 feet from the five (5) feet side yard setback requirement on the south side for an existing outside shower, covered porch, and HVAC units, a variance of 0.9 feet from the fifteen (15) feet rear yard setback for an existing two-story deck and first-floor screen porch, a variance of 6.0 feet from the fifteen (15) feet rear yard setback for existing steps, and a variance of 1.5 feet from the fifteen (15) feet rear yard setback for an existing two-story deck and first-floor screen porch.

Kathy Camac was sworn in to testify about the Application.

Ms. Camac testified that she proposes to place a permanent shed where there is already a shed; that the neighbors are saying to get rid of the old shed; that the neighborhood has small lots; that the proposed shed will not affect parking; that she has no room for storage; that no matter the location of the shed, a variance is needed to place the shed; that the development was originally created with small lots for singlewide manufactured homes; that the developer created the small lots; that the variances will not alter the essential character of the neighborhood; that there are several homes in the neighborhood that look like her lot; that the proposed shed will improve the character of the neighborhood; that she is going as small as she can to be able to have a garage door on the shed; that she is removing the old shed and installing a new shed; that the house was built in 2001; that the existing shed is 1 foot narrower than the proposed shed; that there is about 6.5 feet from the edge of paving to her front property line; that the shed will have a permanent foundation and will be designed to minimize flooding issues; that the shed will be attached to the home but will not have an entrance to the dwelling; that the HVAC, decks, steps, and porch have been on the Property since 2001 with no complaints from neighbors; and there have been no additions made to those structures.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12144 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its small size;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12145 – John & Deborah McKenzie seek a variance from the maximum fence height for a proposed structure (Sections 115-184 and 115-185 of the Sussex County Zoning Code). The property is located on the east corner of Buckskin Trail and Covered Bridge Trail. 911 Address: 27217 Buckskin Trail, Harbeson. Zoning District: AR-1. Tax Map: 235-30.00-365.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received four (4) letters in support of the Application and no correspondence in opposition to the Application. The

letters of support were read into the record. The Applicants seek a variance of 8.0 inches from the forty-two (42) inch fence height requirement for a proposed fence on a corner lot.

Deborah McKenzie and John McKenzie were sworn in to testify about the Application.

Mr. McKenzie testified that the portion of the fence which is in question is the section of fence which runs along Covered Bridge Trail and turns at the rear of the property line; that they are proposing to place a fence along the side road; that a pine tree about 25 feet high is 15 feet from their property line; that there are larger pine trees nearby; that there is similar fencing on neighboring properties that are about 50 inches in height; that they have discussed placing the fence with their homeowner's association; that they received approval from their homeowner's association; and that there are other corner lots with fences in the neighborhood.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12145 for the requested variance based on the record made at the public hearing and for the following reasons:

1. There are similar fences in the neighborhood;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12146 – Daniel Sturgis seeks variances from the rear yard setback for existing and proposed structures (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Angola Rd. East, approximately 437 feet north of Woodland Cir. 911 Address: 22892 Angola Rd. East, Lewes. Zoning District: AR-1. Tax Map: 234-11.20-25.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 3.8 feet from the fifteen (15) feet rear yard setback requirement for a proposed screened porch.

Daniel Sturgis and Jake Murdick were sworn in to testify about the Application.

Mr. Sturgis testified that he purchased the property in August 2017; that there is already an existing deck; that he wants to enclose a portion of the existing deck to better enjoy the rear yard; that the screened in porch will cover about 1/3 of the deck that is located closest to the rear; that there is common area adjacent to the rear of the Property; that the lot is shallow; that his neighbors do not object to the variance; that the difficulty was not created by the Applicant; that the lot is small and unique; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Murdick testified that there will no longer be steps so there is no need for a step variance.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12146 for the requested variance based on the record made at the public hearing and because the Applicant met all the standards for granting a variance.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Meeting was adjourned at 9:45 p.m.